

qrulepubliccomments

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Cc: Chris Koch
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Attachments: WSC CDC Communicable Disease Comments.pdf

Attached please find a copy of the World Shipping Council's comments on the Centers for Disease Control and Prevention's proposed rule on the Control of Communicable Diseases (70 FR 71892).

Please feel free to contact me if you have any problems with the attached file.

Best regards, Chuck

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Comments of the World Shipping Council

**Before the
Centers for Disease Control and Prevention**

In the Matter of

**Notice of Proposed Rulemaking
For the Control of Communicable Diseases
Proposed Changes to 42 C.F.R. §§ 70, 71**

February 10, 2006

I. Introduction

The World Shipping Council (the “Council”) is a non-profit trade association of over forty international liner shipping¹ ocean carriers, established to address public policy issues of interest and importance to the international liner shipping industry. The Council’s members include the leading ocean liner companies from around the world -- carriers providing efficient, reliable, and low-cost ocean transportation for America’s international trade. The members of the World Shipping Council are major participants in an industry that has invested over \$150 billion in the vessels, equipment, and marine terminals that are in worldwide operation today. Today, over 1,000 ocean-going liner vessels, mostly containerships, make more than 22,000 calls at ports in the United States each year -- more than 60 vessel calls a day. In 2005, we estimate that approximately 26 million TEUs of containerized cargo were imported into or exported from the U.S. The industry generates over a million American jobs and over \$38 billion of wages annually to American workers. The industry provides the knowledge and expertise that built, maintains, and continually expands a global transportation network that provides seamless door-to-door delivery service for almost any commodity moving in America’s foreign commerce. The Council’s member lines² include the full spectrum of carriers from large global lines to niche carriers, offering container, roll on-roll off, and car carrier service as well as a broad array of logistics services.

The members of the Council have worked closely with the U.S. government to address the need for enhanced security of international maritime commerce. The industry also recognizes the importance of securing America’s trade and world trade from the threat of a pandemic outbreak of disease.

The Council’s comments on this proposed rulemaking are made in a continued spirit of commitment to address these challenges with measures that are both meaningful and effective, and which continue to preserve the immense benefits that the American economy, American businesses and American consumers receive from the efficient and reliable flow of international commerce.

The United States is the largest trading nation in the world for both exports and imports, accounting for roughly 20 percent of the world trade in goods. The free flow of international trade is crucial to the smooth functioning of our national economy. The combined value of U.S. exports and imports of goods in 2005 was approximately \$2.65 trillion dollars. Of that amount, approximately \$1.2 trillion was international waterborne trade arriving at or departing from U.S. ports. Roughly half of that was cargo carried on liner vessels. That figure averages out to approximately \$1.5 billion worth of containerized goods moving through U.S. ports each day. The international ocean transportation system that moves those exports and imports is an integral part of the network of product supply chains that links American importers and exporters with

¹ “Liner shipping” involves vessels engaged in regularly scheduled service to U.S. ports (e.g., ships leaving particular foreign ports for particular U.S. ports on a weekly schedule) in contrast to cargo vessels that call on U.S. ports for a particular voyage when hired (e.g., tanker and bulk shipping).

² A list of the World Shipping Council’s member companies is provided as Attachment A.

overseas customers and suppliers, intermediate and final manufacturers, domestic carriers, distributors, and retail outlets.

The Council appreciates and supports the efforts by the federal government to protect lives, property, and the economic vitality of America and its trading partners. Our comments recognize the need both to protect America's trade and to allow such commerce to continue to operate efficiently and reliably. They also recognize this proposed rulemaking's effort to plan with some foresight for addressing such issues, particularly since the emergence of the threat of the avian flu. A potential pandemic's ramifications could affect virtually every shipper, every importer, every port, every marine terminal operator, every transportation intermediary, and every maritime carrier involved in the transportation of goods by sea to and from the United States. It will affect the CDC, its operating systems and capabilities and its staffing. It could affect the cost, speed and reliability of international commerce. The principles and issues involved are substantial and numerous. The agency's objective cannot be achieved unless both the affected commercial parties and the agency itself are fully prepared to implement such a new reporting regime.

With full support for the efforts of the U.S. government to establish enhanced disease prevention while ensuring the efficient flow of commerce, we offer the following comments to this proceeding.

II. Issues Raised by the Proposed Rulemaking

We support the CDC's objective in this rulemaking, but there are a number of issues and challenges that we believe should be addressed. The issues and challenges are addressed below in the order of the proposed regulations, but the comments to sections 71.8, 9 and 10 on the type, format and method of reporting are among the most important. The major points in the regulations on which we have comments are as follows:

1. § 71.1: Definitions

A. Vessels Covered

The proposed regulations apply to vessels operated by a "shipline," which is defined as: "any shipline operating ships commercially, regardless of an individual ship's flag or registry or the shipline's principal place of business, carrying passengers or cargo under regular schedules arriving in or departing from the United States." (emphasis added)

If the safety of the nation's health is the goal, there is no apparent reason why, in the cargo transport sector, liner shipping, operating on regular schedules, should be singled out, and non-liner shipping excluded. Liner shipping vessels are no more likely to employ diseased crew than non-liner cargo vessels. Either liner cargo vessels should be excluded from the proposed rule or all cargo vessels should be treated the same.

B. Definition of an “ill person”

While we have no specific comments regarding the medical definition of an ill person in the proposed regulation, it is important to recognize that cargo vessels do not carry medical officers trained for diagnostic medical observations.

2. § 71.5: Suspension of entry

Under the terms of the proposed regulations, if the Director of the CDC determines there is a threat of introduction of a communicable disease from a certain country, the Director is authorized to prohibit the entry of goods or people from that country. The proposal does not state how this would be done or communicated, other than by an order.

We believe, and seek CDC’s confirmation, that it is not expected to be likely that this authority would be invoked against cargo without sound medical basis, as it logically would depend on a disease being communicated by cargo or conveyances, rather than people. For example, in 2003, the CDC determined that SARS was not communicable by cargo or conveyances. Suspension of entry can thus be expected to be a remedy more likely to be used against persons, and not property. We respectfully request CDC to include its views and intentions on this matter in the final regulation.

In the unlikely event that the CDC did decide to deny entry to cargo from a particular country of origin, however, the process and its results could be quite chaotic for the liner shipping industry and America’s international trade. Such a possibility would require considerable advance planning to implement. To avoid such negative implications and impairment of the American economy, we believe it is important that the CDC understands the implications and works with the industry and other government agencies responsible for regulating vessels and cargo (the Coast Guard and Customs and Border Protection (CBP)) on at least some advance planning for how this would be done. The following issues seem relevant for such further consideration:

1. The country of origin of the goods may not be known from a carrier’s bill of lading, or from other information available to the carrier. Such information should be in the possession of the U.S. importer and its agents.
2. The importer’s goods declaration would seem to be the logical documentation to use to obtain such information, but that documentation is generally not provided to CBP until after cargo has been loaded aboard the vessel in the foreign port and the vessel has sailed for the U.S. In some circumstances, such documentation is not provided until after the cargo has been released from the U.S. port of discharge for delivery to an inland U.S. destination. Advance planning and procedures would have to be developed with CBP for how such cargo would be held at the U.S. port of discharge.
3. Cargo moving “in-bond” to an inland destination would present challenges that need to be discussed with CBP.

4. Carriers would have to be allowed to unload containers holding such cargo in a U.S. port (even if CBP did not release them) simply to work the vessel.
5. Clear and careful thought needs to be given to what would be done with such quarantined cargo held in a U.S. port facility. Would it be held indefinitely in the U.S. discharge port? Would it have to be loaded back aboard the vessel? Would the foreign load port accept it back if the U.S. government stated it presented an unacceptable risk to public health?
6. How would such a decision be announced? Carriers and their customers would need to know immediately so that they could try to not load any additional cargo from the targeted country of origin aboard their vessels.

While we presume the chance of cargo or conveyances being denied entry is remote, the consequences of such a decision are so substantial that CDC, CBP, Coast Guard and the industry should discuss this matter in greater detail and undertake appropriate planning and procedures.

3. §§ 71.8, 9: Routine Reporting Requirements Regarding Crew Death or Illness

The proposed rules contain a number of significant changes to existing regulations dealing with crew illness and death information.

Under the current regulations, the master of a ship is required to report any death or ill person among passengers or crew (including those who have disembarked or been removed) during the 15 day period preceding the date of expected arrival or during the period since departure from a U.S. port (whichever period is shorter). 42 CFR § 71.21. Unlike passenger vessels, liner cargo vessels are not required to report cases of diarrhea (including zero cases). A master is also required to report any death or ill person on board while the carrier is in port. 42 CFR § 71.35. The proposed CDC regulations would require cargo vessels to continue to report deceased or ill crew, as defined, but also to report other illnesses, such as diarrhea, including zero cases. The current distinction between passenger and cargo vessels is lost in the proposed CDC regulations. We offer several comments in this regard.

First, while we recognize that the Government wants to be notified electronically of all ill or dead crew 24 hours in advance of arrival of all ships, regardless of type, and all cases of diarrhea 4 hours before arrival, the proposed regulations call for reports to be filed *even* when there are no ill or dead crew. We recommend that only positive reports of crew illness should be required from cargo vessels.

Second, the creation of a new crew reporting requirement and procedure to another U.S. government agency is inconsistent with the concept of the “single window” reporting mechanism for vessel crew information that the Coast Guard and CBP, with the active support and encouragement of the Council, have established for crew-related information. Today that single window filing, which meets Coast Guard and CBP requirements, is the electronic Notice of Arrival/Departure (eNOA/D) system,

administered by the Coast Guard, under which crew information filings are made 96 hours before the vessel's arrival in a U.S. port. If a vessel files an eNOAD, that electronic submission also meets the CBP's Advance Passenger Information System (APIS) requirements.

We believe that, instead of creating a new crew information data filing obligation and system, the existing single window system should be used to meet this new proposed requirement. For that to happen, (1) CDC would need access to the eNOAD system, and (2) the eNOAD data would need to meet CDC's needs.

We recommend that the CDC work with the Coast Guard to arrange for CDC's access to eNOAD, just as the Coast Guard has given CBP and other agencies access to that data. Assuming this could be accomplished, and, based on discussions we have had with the Coast Guard, we are not aware of any systems or other issue that would prevent this, then the eNOAD system could simply be modified to meet CDC's needs. A simple change to the eNOAD data template to capture crew medical data would require some lead time to implement, but this lead time would seem to fit with the proposed implementation time line for the plan.³ If eNOAD were modified this way, it would provide an electronic way to report crewmen's medical data 96 hours out for all arriving cargo vessels, and then an update (*if needed*) 24 hours or less before arrival, much like an eNOAD is updated today for changes, e.g., in arrival time.

As mentioned above, we would propose that there be no reporting requirement if the ship had no ill or dead crew, as the filing of no problems would be unnecessary. Using the eNOAD format would provide a uniform, existing mechanism for the industry to electronically file such information, without each shipping line having to develop its own information filing plan to be submitted to CDC and implemented separately from the current crew data submission process. It would also be consistent with the current Notice of Arrival requirements that *changes* to previously filed arrival information (e.g., change of arrival time and place) would need to be filed via eNOAD. This approach should satisfy the regulation's need to have a reporting plan for such data, as it would be a built-in element of the vessel operator's routine filing system.

4. §§ 71.10, 11: Additional Crew Information: Industry Obligation to Obtain and Retain Particular Data

Section 71.10 requires that vessels obtain nine specific types of information from their crews that upon request from CDC can be provided within 12 hours. Section 71.11 of the proposed regulations provides that, within six months of the final publication of this rule, a ship line must develop a written plan to ensure the electronic reporting of the crew information required pursuant to § 71.10.

A majority of the information sought by CDC under § 71.10 is already captured from vessels via the Coast Guard's eNOAD system.

³ The Council would support any necessary changes with the Coast Guard.

First, a 24/7 contact person and the company security officer are currently required to be filed with the eNOAD. We seek confirmation that either of these individuals could assume the responsibility of the emergency contact information person.

Second, we wish to note that some of these data elements may be inapplicable to or unavailable from some crew (e.g., e-mail address or home phone), and wish to confirm that CDC recognizes that not all seamen will have e-mail addresses or home phone numbers. We recommend these two items be optional for the crew of cargo vessels.

Lastly, we note that the proposed regulations do not require that this data be maintained in a separate database or submitted to CDC in a specific format. This is consistent with the information production requirements recently established by the Food and Drug Administration's recently promulgated regulations under the Bioterrorism Act, where carriers have to produce records when requested, but can comply by the production of the information from their commercial operating systems in the electronic format in use by that carrier. We support that approach.

5. § 71.31: Penalties

The proposed regulation reads, “[p]ersons in violation of this part are subject to a fine of no more than \$250,000 or one year in jail, or both, or as otherwise provided by law. Violations by organizations are subject to a fine of no more than \$500,000 per event or as otherwise provided by law.”

Recognizing that there may be limitations on how well a cargo vessel's crew will diagnose medical issues, such as determining conditions such as “febrile respiratory disease,” and that compliance also depends on crew reporting an illness, it is important that the regulations clarify that criminal penalties are applicable only in cases of “knowing or willful” noncompliance. The phrase “knowingly or willfully” should be added between “persons” and “in violation” in the first sentence of this section.

III. Conclusion

The World Shipping Council and its Members support CDC's objective to establish effective mechanisms against the transmission of communicable diseases. The Council is very willing to work with CDC to help it meet the government's enhanced public health requirements.

We request that the questions and comments we have raised in this submission be addressed before implementation. The United States has the right and duty to protect itself and its trade from health risks. At the same time, because it is the largest trading nation affecting economic activities around the globe, significant adjustments to its trading laws should be undertaken in a manner that all of its government and commercial trading partners can clearly understand and reasonably adapt to when necessary.

We hope these comments and suggestions are helpful. Since September 11, the Members of the World Shipping Council have supported the U.S. Government's efforts to address the current security risks through both words and deeds. They will continue to work with the Government in the same spirit to support the implementation of these proposed rules in a manner that is clear, workable, and as accommodating to the movement of American commerce as is practicable.

Attachment A

Member Companies of the World Shipping Council

APL
Atlantic Container Line (ACL)
China Ocean Shipping Company (COSCO)
China Shipping Group
CMA-CGM
CP Ships
(including Italia Line, Lykes Lines, Contship
Containerlines, TMM Lines, and ANZDL)
Crowley Maritime Corporation
Compania Sud-Americana de Vapores (CSAV)
Evergreen Marine Corporation
(including Lloyd Triestino, and Hatsu Marine Ltd.)
Great White Fleet
Hamburg Sud
Hanjin Shipping Company
Hapag-Lloyd Container Line
HUAL
Hyundai Merchant Marine Company
Kawasaki Kisen Kaisha Ltd. (K Line)
Maersk
Mediterranean Shipping Company
Mitsui O.S.K. Lines
NYK Line
Orient Overseas Container Line, Ltd. (OOCL)
P&O Nedlloyd Limited
Safmarine
Senator Lines
Torm Lines
United Arab Shipping Company
Wallenius Wilhelmsen Lines
Yangming Marine Transport Corporation
Zim Israel Navigation Company